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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 W. JAMES CONSTRUCTION, INC., a
12 California corporation; and PRO TOOL &
13 EQUIPMENT, INC.,

14 Plaintiffs,

15 v.

16 MJ DIESEL ENGINE SPECIALIST,
17 LLC, a Washington limited liability
18 company; and DOES 1 through 100,
19 inclusive

20 Defendants.

21 Case No.: 16-cv-02277-H-JMA

22 **ORDER DENYING AS MOOT**
23 **DEFENDANT'S MOTION TO**
24 **DISMISS COMPLAINT**

25 [Doc. No. 9.]

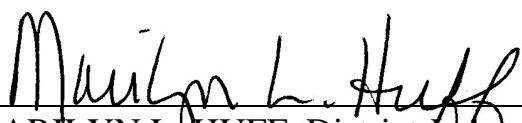
26 On September 9, 2016, Plaintiff W. James Construction, Inc. filed a complaint
27 against Defendant MJ Diesel Engine Specialist, LLC, alleging causes of action for
28 negligence and breach of contract. (Doc. No. 1.) On November 18, 2016, Defendant filed
a motion to dismiss Plaintiff's complaint pursuant to Federal Rule of Civil Procedure
12(b)(6), or in the alternative, to transfer venue pursuant to 28 U.S.C. § 1404(a). (Doc.
No. 9.)

29 In an effort to address the issues raised in Defendant's motion to dismiss, on
30 December 5, 2016, Plaintiff filed a first amended complaint pursuant to Federal Rule of
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1 Civil Procedure 15(a)(1), adding Pro Tool & Equipment, Inc. as an additional Plaintiff in
 2 the action. (Doc. No. 12.) On December 5, 2016, Plaintiffs also filed a response in
 3 opposition to Defendant's motion where Plaintiffs argue that the first amended complaint
 4 cures the claimed defects identified by Defendant in its motion to dismiss. (Doc. No. 13.)
 5 Accordingly, in light of Plaintiff's amended pleading, the Court denies as moot
 6 Defendant's motion to dismiss the original complaint, or in the alternative, to transfer
 7 venue without prejudice to Defendant renewing the motion based on the allegations in the
 8 first amended complaint. See Fleming v. Coverstone, No. 08CV355 WQH(NLS), 2008
 9 WL 4628397, at *2 (S.D. Cal. Oct. 17, 2008) ("[The amended pleading] contains
 10 significant additions and changes to the factual allegations in the [prior pleading]. In light
 11 of the significant changes in the [amended pleading], the Court denies the Motion to Strike
 12 and Motion to Dismiss the [prior pleading] as moot."); Salat v. Pirotto, No. 2:14-CV-
 13 01468-MCE-AC, 2014 WL 6435509, at *1 (E.D. Cal. Nov. 14, 2014) ("The court finds
 14 that defendants' motion to dismiss is moot, as plaintiff's initial complaint has been
 15 superseded by his first amended complaint."); see also Forsyth v. Humana, Inc., 114 F.3d
 16 1467, 1474 (9th Cir. 1997) (An "amended complaint supersedes the original, the latter
 17 being treated thereafter as non-existent."').

18 **IT IS SO ORDERED.**

19 DATED: December 5, 2016



MARILYN L. HUFF, District Judge
 UNITED STATES DISTRICT COURT

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